



California Fair Political Practices Commission

June 7, 1988

Michael I. Mitoma
Temporary Mayor
City of Carson
510 West Carson Street
Carson, CA 90745

Re: Your Request For Advice
Our File No. A-88-165

Dear Mayor Mitoma:

You have requested advice about application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to your duties as Temporary Mayor of the City of Carson.

QUESTION

You are the Chairman, President and Chief Executive Officer of Pacific Business Bank. May the City of Carson place deposits in Pacific Business Bank?

CONCLUSION

The Act prohibits you from attempting to influence the city treasurer to deposit city money in Pacific Business Bank. Attempting to influence the treasurer includes contacting or appearing before her. You also would be disqualified from participating in city council decisions that would have foreseeable and material financial effects on the bank.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Michael I. Mitoma
June 7, 1988
Page 2

Based on the facts you have provided, however, the Act does not prohibit the city treasurer from depositing city money in your bank.^{2/}

FACTS

You are the Temporary Mayor for the City of Carson. You also are the Chairman of the Board, President, and Chief Executive Officer of Pacific Business Bank. The bank has assets of \$45 million. Its stock is qualified for public sale, but is not traded on a stock exchange. Instead, the stock currently is traded as a market maker through three brokerage houses. You own two percent of the outstanding stock of Pacific Business Bank. Before you were elected to the city council, the city used to deposit up to \$5 million in Pacific Business Bank.

The City of Carson Treasurer is an elected official. She makes all decisions about city investments without participation, review, or final approval by the city council. Nevertheless, the treasurer reports to the city council about the status of investments.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he or she has a financial interest.

An official has a financial interest in a decision that will have a foreseeable and material financial effect, different from the effect on the general public, on 1) any investment interest worth \$1,000 or more in a business entity, 2) any source of income of \$250 or more promised to or received by an official within 12 months before the decision or 3) any business entity in which the public official is a director, officer, partner, trustee, employee or holds any position of management. (Section 87103(a), (c), and (d).)

^{2/} Other state statutes, such as Government Code Section 1090, may apply to your situation. We do not administer Section 1090 or related statutes. Therefore, we cannot advise you about their application to your situation.

Michael I. Mitoma
June 7, 1988
Page 3

You are a public official. (Section 82048.) Pacific Business Bank is 1) a source of income to you, 2) an investment interest worth more than \$1,000, and 3) a business entity of which you are an employee and an officer, and in which you hold a position of management. You would be disqualified from participating in a governmental decision that would have a material financial effect on Pacific Business Bank.

Participation In A Governmental Decision

You requested advice about whether the city may deposit city money in Pacific Business Bank now that you are a member of the city council. The Act, however, does not prohibit the city treasurer from depositing city funds in Pacific Business Bank, just because you are a member of the city council. The Act prohibits you from participating in city council decisions or attempting to influence governmental decisions that would have foreseeable and material financial effects on Pacific Business Bank.

A public official makes a governmental decision when the official votes on a matter, appoints a person, obligates his or her agency to a course of action, or enters into a contractual agreement on behalf of his or her agency. (Regulation 18700(b), copy enclosed.) Participation in a governmental decision includes advising or making recommendations to the decision-maker, without significant intervening review. (Regulation 18700(c).)

The facts you have provided show that the decision to deposit city funds in Pacific Business Bank is not a governmental decision before the city council. The city treasurer is an elected, autonomous official with sole discretion to deposit city funds in Pacific Business Bank. The city council does not participate in, review, or give final approval of the treasurer's decisions to invest or deposit city funds. Therefore, a decision to deposit city money in your bank would not be a governmental decision by the city council. Under the Act, your membership on the city council does not automatically prevent the city from depositing money in your bank.

On the other hand, the Act prohibits you from using your official position to influence a governmental decision before an official who is under the budgetary control of the city council. (Section 87100; Regulation 18700.1(a), copy enclosed.) Therefore, you are prohibited from contacting or

Michael I. Mitoma
June 7, 1988
Page 4

appearing before or otherwise attempting to influence the city treasurer about depositing city funds in your bank.

The provisions of Government Code Section 1090 also may apply to a decision about a contract between the city and Pacific Business Bank. The Commission, however, does not administer this statute. We refer you to your city attorney for advice regarding Section 1090.

Governmental Decisions With Foreseeable and Material Financial Effects On Pacific Business Bank

You may be disqualified from other city council decisions that would have foreseeable and material financial effects on Pacific Business Bank, if the effects of the decisions are different from the effects on the general public. To require disqualification, the effect of a decision must be foreseeable. An effect does not have to be certain to be foreseeable. However, if an effect were a mere possibility, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, 206-207, copy enclosed.)

To require disqualification, the effect of the decision also must be material. Regulation 18702.1 (copy enclosed) reflects the conclusion of the Commission that a decision will have a material financial effect on a source of income or on an investment interest that appears before a government agency of which an official is a member. Pacific Business Bank is a source of income and an investment interest for you. Therefore, you would be disqualified from participating in a decision if the bank appeared before the city council concerning the decision. (Regulation 18702.1(a)(1)(2).)

Other decisions before the city council may affect Pacific Business Bank indirectly. For example, changes in the city's general investment policies might indirectly affect your bank, as well as other banks doing business with the city. Regulation 18702.2 (copy enclosed) has guidelines for determining whether the effect of a decision on Pacific Business Bank would be material. For example, because the bank has net tangible assets of more than \$18,000,000 and if we assume pre-tax income for the past fiscal year was at least \$2,500,000, a decision that would result in an increase or decrease in the value of assets of \$150,000 or more would be considered material. (Regulation 18702.2(d) and (f).) You would be disqualified from participating in such a decision, unless the effect of the decision would be the same as that on the general public.

Michael I. Mitoma
June 7, 1988
Page 5

I hope this letter satisfactorily answers your request for advice. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, appearing to read "Margarita Altamirano", is written over the typed name.

By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:plh
Enclosures



Pacific Business Bank

510 West Carson Street / Carson, California 90745 / (213) 533-1456

April 29, 1988

Ms. Jeanne Pritchard
Political Reform Consultant
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Dear Ms. Pritchard:

As the Mayor Pro Tempore for the City of Carson, I would like to inquire as to the feasibility of the City placing deposits in a local bank. The local bank in question is Pacific Business Bank in which I am the Chairman of the Board, President and Chief Executive Officer. I own 2% of the outstanding stock of the bank.

The City has an elected City Treasurer who is totally autonomous from the City Council. If the City is able to place deposits in my bank, please identify the type and terms allowable.

Your assistance on this matter is appreciated.

Sincerely,

Michael I. Mitoma,
President/Chairman of the Board
and Chief Executive Officer

MIM:ka



California Fair Political Practices Commission

May 4, 1988

Michael I. Mitoma
President/Chairman of the Board
and Chief Executive Officer
Pacific Business Bank
510 West Carson Street
Carson, CA 90745

Re: 88-165

Dear Mr. Mitoma:

Your letter requesting advice under the Political Reform Act was received on May 3, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

• We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths", is written over the typed name.

Diane M. Griffiths
General Counsel

DMG:plh



Pacific Business Bank

510 West Carson Street / Carson, California 90745 / (213) 533-1456

April 29, 1988

Ms. Jeanne Pritchard
Political Reform Consultant
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Dear Ms. Pritchard:

As the Mayor Pro Tempore for the City of Carson, I would like to inquire as to the feasibility of the City placing deposits in a local bank. The local bank in question is Pacific Business Bank in which I am the Chairman of the Board, President and Chief Executive Officer. I own 2% of the outstanding stock of the bank.

The City has an elected City Treasurer who is totally autonomous from the City Council. If the City is able to place deposits in my bank, please identify the type and terms allowable.

Your assistance on this matter is appreciated.

Sincerely,

Michael I. Mitoma,
President/Chairman of the Board
and Chief Executive Officer

MIM:ka